

HOUSE BILL 2202

By DeBerry

AN ACT to amend Tennessee Code Annotated, Title 38,  
relative to the prosecution of criminal misconduct  
in office.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 38, is amended by adding the following  
new chapter 4:

**38-4-101.**

(a) As used in this chapter:

(1) "Criminal misconduct in office" means:

(A) The conduct occurred while the person was an elected or  
appointed public servant;

(B) The conduct rises to the level of a criminal offense; and

(C) The conduct concerns an official duty or responsibility of the  
servant's position;

(2) "Public servant" has the same meaning as in § 39-16-401; and

(3) "TBI" means the Tennessee bureau of investigation.

(b)

(1) The sheriff of a county or the chief law enforcement officer of a  
municipality may request in writing that the TBI conduct an investigation on a  
specified public servant for the purpose of determining if the public servant has  
committed criminal misconduct in office.

(2) The TBI may, on its own initiative, commence an investigation of a  
public servant upon the written findings of the director that cause exists to believe

a public servant has engaged in criminal misconduct while in office and that a law enforcement agency has not requested that an investigation be conducted. The director shall attest to the truth and accuracy of the findings by signing the document under penalty of perjury.

(c) Requests from law enforcement pursuant to this chapter shall be limited to alleged acts of criminal misconduct in office by the named public servant. The TBI shall not consider any request for an investigation into criminal conduct that does not involve criminal misconduct in office.

(d) The request for investigation shall contain only facts, and not opinion, in support of the need for an independent investigation of the servant. The request shall contain the following:

(1) The name of the public servant that the sheriff or chief is requesting be investigated;

(2) The office held by the public servant;

(3) The conduct the sheriff or chief believes to be criminal misconduct in office;

(4) The date the conduct occurred or if the conduct is ongoing;

(5) The reason or reasons the investigation could not be conducted using existing local law enforcement protocols and procedures;

(6) Any evidence of criminal misconduct in office collected and maintained concerning the public servant;

(7) Whether the sheriff or chief has consulted with the district attorney general in that district about the conduct and, if so, the result of the consultation; and

(8) The reason given by the district attorney general, if any, for declining or failing to prosecute the official.

(e) The TBI shall consider the request to conduct an investigation after reviewing the documents submitted by the sheriff or chief. The TBI may request more detailed

information, including documents, records, other materials, or a personal interview with the chief or sheriff if the request is insufficient to reach a decision. The TBI may conduct such other investigation as is necessary to determine the facts and make an informed decision.

**38-4-102.**

(a) If, after reviewing a request by a sheriff or chief, the TBI finds probable cause to believe that the public servant named in the request engaged in criminal misconduct in office and should be prosecuted for the conduct, the TBI shall notify the district attorney general with jurisdiction over the servant's conduct of its findings.

(b) At the same time the TBI notifies the appropriate district attorney general, it shall also notify the special prosecution panel created by § 38-4-103.

(c) Upon receipt of notice from the TBI, the district attorney general shall have sixty (60) days to commence prosecution against the public servant. However, if the statute of limitations for the offense stated in the notice will expire prior to the sixty-day limit, the district attorney general shall have until fifteen (15) days prior to the expiration of the statute of limitations to commence prosecution.

(d) If the TBI does not find probable cause to believe that criminal misconduct in office occurred or that the servant named in the request engaged in the misconduct, the TBI shall deny the request for an investigation and notify the sheriff or chief.

**38-4-103.**

(a) There is created a special prosecution panel to be initially composed of five (5) members as follows:

(1) One (1) former judge who had criminal jurisdiction to be appointed by the governor;

(2) One (1) former judge who had criminal jurisdiction to be appointed by the speaker of the senate;

(3) One (1) former judge who had criminal jurisdiction to be appointed by the speaker of the house of representatives;

(4) One (1) former district attorney general to be jointly appointed by the governor, speaker of the senate, and speaker of the house of representatives; and

(5) One (1) former district public defender to be jointly appointed by the governor, speaker of the senate, and speaker of the house of representatives.

(b) The duty of the panel is to determine if a special prosecutor should be appointed in those cases in which the panel is notified by the TBI that, in the opinion of the TBI, there is probable cause to believe that a public servant has committed criminal misconduct in office, and the appropriate district attorney general has failed to commence prosecution of the official within the time set out in § 38-4-102.

(c) Upon receiving notice from the TBI pursuant to this section, the special panel shall conduct a hearing and may call anyone to the hearing whose testimony the panel deems relevant and probative. The district attorney general about whom the TBI filed notice with the panel shall not have a right to attend the hearing.

(d) What transpires at the hearing, the testimony of witnesses, all records, documents, exhibits, files, whether electronic or paper, submitted or considered at the hearing, deliberations by the panel, and orders and opinions of the panel shall be confidential and not open for public inspection.

(e) If, at the end of the hearing, the panel finds that there is probable cause to believe that a public servant engaged in criminal misconduct and that the acts were committed in office, the panel shall move to the selection of a special prosecutor to take

over jurisdiction of the misconduct. At least three (3) members of the panel must vote in the affirmative that a special prosecutor is necessary to authorize the panel to select a special prosecutor.

(f) Upon voting to appoint a special prosecutor, the panel shall notify the speaker of the senate, the speaker of the house of representatives, and the governor of its actions.

**38-4-104.**

(a) If the panel votes to appoint a special prosecutor, the special prosecutor shall be:

(1) A retired or former district attorney general;

(2) A current district attorney general whose district is not contiguous with the district for which the special prosecutor is appointed;

(3) A former United States attorney; or

(4) A current United States attorney who does not have federal jurisdiction over the district for which the special prosecutor is appointed.

(b) Upon appointment by the panel, the special prosecutor shall have all the power and authority of a district attorney general to prosecute the case for which the special prosecutor was appointed. The special panel may, by at least three (3) affirmative votes, reconsider and reverse the appointment of a special prosecutor at any time. Upon a reversal, the special prosecutor is relieved of all duties and authority as a special prosecutor, effective the date of reversal.

(c) The special prosecutor may appoint an assistant district attorney general in the district for which the prosecutor is appointed for assistance with local court rules and procedure and to have a person with knowledge of that district present on the case.

(d)

(1) Cognizant of the applicable statute of limitations for the public servant's offense, the special prosecutor shall investigate and become familiar with the case. The special prosecutor shall then seek an indictment against the public servant before the applicable statute of limitations occurs.

(2) The special prosecutor shall periodically report to the special panel concerning the status of the case and provide any requested information about the case to the panel.

SECTION 2. This act shall take effect July 1, 2016, the public welfare requiring it.